

KNIGHT & MILLER OIL CORPORATION

IBLA 73-328

Decided November 13, 1973

Appeal from the decision of the Wyoming State Office of the Bureau of Land Management denying reinstatement of oil and gas lease W 0319394.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

It is proper to deny a request for reinstatement of an oil and gas lease terminated for failure to pay advance rental timely where the petitioner has not shown that its failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: William B. Collister, Esq., of Denver, Colorado, for appellant.

OPINION BY MRS. LEWIS

Knight & Miller Oil Corporation has appealed from the February 28, 1973, letter decision of the Wyoming State Office of the Bureau of Land Management, which held its oil and gas lease had terminated for late payment of the annual rental.

The rental was due on or before October 1, 1972. On October 5, 1972, the Wyoming State Office received a letter from Knight & Miller Oil Corporation, dated October 2 and signed by Gwen Lovendahl, with check for \$ 200 enclosed in payment of the rental. She acknowledged that the rental was late and asked for favorable consideration, stating that she handles all rentals for appellant and was absent from work the latter part of the previous week. Therefore, the matter was overlooked.

On December 27, 1972, the State Office wrote appellant for further information concerning the reasons for the late payment,

adding "[a]t the time we hear from you, we will consider the letter of October 5, a petition for reinstatement and advise you further." Appellant did not reply to this letter.

Appellant requests that the lease be reinstated, contending that its failure to pay the rental on time was due to a justifiable delay. In support thereof, the corporation alleges that during the time when this rental was due, the corporation's lease rental department was under the control and supervision of Gwen Lovendahl; for reasons unknown to corporate management during the period beginning in September 1972, and running through January 1973, rentals were not paid and both the notices of lease rentals received by mail and the lease rental payment checks that should have been passed to management for signature were retained in Gwen Lovendahl's desk, which situation involved all rentals for all of the corporation's leases, including fee, State and Bureau of Land Management leases; and that when management became aware of the problem in the lease rental section, the situation was corrected. In view of these assertions, the appeal will be considered as an application for reinstatement.

When payment of the annual rental for such a lease is not received on or before the anniversary date the lease is not terminated by the act, deed or decision of any federal employee. Rather, the lease terminates automatically by operation of law, as required by the Act of July 29, 1954, 30 U.S.C. § 188 (1970), and the fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee. However, the law permits reinstatement of terminated leases under certain circumstances at the discretion of the Secretary of the Interior. In order to qualify, the lessee must establish to the satisfaction of the Secretary that his failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2).

In the instant case the rental was late because in the ordinary course of appellant's business and in its internal management thereof, appellant failed to submit the payment timely. Thus the failure was not justifiable. Nor is it shown that the failure occurred because there was not a lack of due diligence on the part of appellant. Accordingly, as the conditions permitting acceptance of the late payment and reinstatement of the lease have not been met, we find the lease may not be reinstated. Norman K. Husted, 12 IBLA 341 (1973); John L. Stambaugh, 11 IBLA 27 (1973); Monturah Company, 10 IBLA 347 (1973); Louis Samuel et al., 8 IBLA 268 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Member

We concur:

Frederick Fishman
Member

Martin Ritvo
Member

